

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-600

November 21, 2002

VERIZON NEW ENGLAND INC. D/B/A
VERIZON MAINE
Request for Approval of
Interconnection Agreement and
Amendment No. 1 with ICG Telecom
Group, Inc.

ORDER APPROVING
INTERCONNECTION
AGREEMENT AND
AMENDMENT NO. 1 WITH
ICG TELECOM GROUP, INC.

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, we approve an interconnection agreement between Verizon New England Inc. d/b/a Verizon Maine (Verizon Maine) and ICG Telecom Group, Inc. (ICG), and an Amendment to that agreement, pursuant to section 252 of the Telecommunications Act of 1996.

On October 3, 2002, Verizon Maine filed a negotiated interconnection agreement with ICG, pursuant to 47 U.S.C. § 252, enacted by the Telecommunications Act of 1996. Section 252 allows interconnection agreements that provide for interconnection between an incumbent local exchange carrier (ILEC) and another telecommunications carrier, including a competitive local exchange carrier (CLEC). It also allows a telecommunications carrier to purchase unbundled network elements or local services at a discounted wholesale rate (the discount reflecting avoided cost), or both, from an ILEC (or CLEC).

The agreement incorporates terms and conditions of a separate interconnection agreement between ICG and Verizon California Inc., approved by the California Public Utilities Commission on February 7, 2002 in Docket No. AL 107, T-16631 (the "Separate Agreement," attached as Appendix 1 to the agreement filed in this proceeding). The agreement filed by Verizon Maine further incorporates a Verizon Maine pricing schedule, attached as Appendix 2 to the agreement filed in this proceeding. In the same filing, Verizon Maine filed Amendment No. 1 to the agreement to incorporate a Verizon Resale Attachment, attached as Appendix A to the Amendment.

ICG will pay to Verizon Maine the interconnection prices contained in the voluntary agreement that was reached pursuant to arms-length negotiations between the parties. The pricing standards contained in 47 U.S.C. § 252(d) apply only to arbitration proceedings under section 252(b) and not to negotiated agreements under section 252(a). Verizon Maine does not represent that the prices contained in the agreement are consistent with the section 252(d) pricing standards or with any other state or federal policy.

Section 252(e)(2) states that a state commission may reject a negotiated agreement only if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or if "the implementation of such agreement or portion is not consistent with the public interest, convenience and necessity." We received no comments by the comment deadline set in an October 24, 2002 Notice of Agreement and Opportunity to Comment. We do not make either of the findings set for in section 252(e)(2) for rejection, and we therefore approve the agreement.

We reserve judgment on whether the rates contained in the agreement are reasonable from the perspective of Verizon Maine's retail ratepayers. Verizon Maine is presently under an alternative form of regulation (AFOR) ordered by the Commission in Docket No. 94-123. The AFOR began in December, 1995. Under the AFOR, Verizon Maine bears the risk of lost revenues resulting from rates that are too low. In Docket No. 99-851, we have continued the AFOR until May 31, 2006. We do not resolve whether Verizon Maine is receiving reasonable compensation from any CLECs that may avail themselves of the rates provided to ICG pursuant to 47 U.S.C. § 252(i).

We note that in the filed agreement letter, ICG "represents and warrants that it is a certified provider of local telecommunications service in the State of Maine...". To the contrary, this Commission has not granted authority to ICG to operate in Maine at this time. If ICG wishes to provide public utility services, it must seek Commission authorization to provide those services pursuant to 35-A M.R.S.A. § 2102, and we will require ICG to maintain schedules of rates, terms, and conditions pursuant to 35-A M.R.S.A. § 304. The terms and conditions shall specify the areas in which the utility will actually provide originating and terminating local exchange service, and may do so by reference to incumbent local exchange carrier exchanges rather than by municipalities.

The agreement filed by Verizon Maine provides for interconnection between ICG and Verizon Maine's network in Maine. If ICG seeks to interconnect with networks maintained by other incumbent local exchange carriers in Maine, it must seek a termination, suspension, or modification of the exemption contained in 47 U.S.C. 251(f)(1)(A).

ORDERING PARAGRAPHS

Accordingly, we

1. Approve the Interconnection Agreement between Verizon New England Inc. d/b/a Verizon Maine and ICG Telecom Group, Inc., and Amendment No. 1 to that agreement, attached hereto, pursuant to 47 U.S.C. § 252(e);
2. Order that ICG Telecom Group, Inc. shall not provide local exchange telephone service until the Commission grants authority to ICG Telecom Group, Inc. to provide such service and until the Commission approves schedules of rates, terms and conditions for the provision of such service; and

3. Order that the Administrative Director shall make a copy of the attached Agreement available for public inspection and copying pursuant to 47 C.F.R. § 252(h) within 10 days of the date of this Order.

Dated at Augusta, Maine this 21st day of November, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.